



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201317012**
Release Date: 4/26/2013
Date: February 1, 2013
UIL: 501.03-11
501.03-30

Contact Person:
Identification Number:
Contact Number:
Employer Identification Number:
Form Required To Be Filed:
Tax Years:

Dear

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(3).

We made this determination for the following reason(s): You did not provide sufficient facts to establish that you engage primarily in activities that accomplish an exempt purpose. Therefore, you failed to establish that you are operated exclusively for exempt purposes described in section 501(c)(3) of the Code.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

If you decide to contest this determination under the declaratory judgment provisions of Code section 7428, you must initiate a suit in the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia before the 91st day after the date that we mailed this letter to you. Contact the clerk of the appropriate court for rules for initiating suits for declaratory judgment. Filing a declaratory judgment suit under Code section 7428 does not stay the requirement to file returns and pay taxes.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read

the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Holly O. Paz
Director, Rulings and Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date: . AUG - 5 2010

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

Legend

M
N
O
P

State 1

State 2

Date 1

Date 2

Date 3

Dear

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code (the Code). Based on the written information exchanged between us, we have determined that you failed to establish your qualification for exemption under that section. Our reasons for this conclusion, and the facts on which it is based, are explained below.

Facts

The information you submitted indicates that you, M, are a calendar year corporation that was formed on Date 1 under the laws of State 1. You mailed your Form 1023 to the IRS in Covington, Kentucky via Federal Express, which recorded receipt of the application on Date 2. The application was stamped received by Cincinnati one day later.

During the application process, we sent you a letter requesting additional information to help

determine whether you qualify for exemption from federal income tax under section 501(c)(3) of the Code. A few months later, we sent you a second letter, also requesting additional information and clarification of the answers you submitted to the first letter we sent. In response to our letters, you submitted three letters (including accompanying information); two of those letters were not submitted under penalties of perjury. We have talked on the telephone on several occasions with your authorized representatives seeking clarification on information you have submitted.

With your application, you filed a Certification of Incorporation (COI), which provides that you were "organized exclusively for charitable, religious, educational, and scientific purposes, including for such purposes, the making of distributions to organizations that qualify as exempt under section 501(c)(3) of the Internal Revenue Code of 1986 or the corresponding provisions of any future United States Internal Revenue Law." Your COI specifically states that you will engage in activities that promote your goal of striving "towards the founding of one or more Christian ministry and Christian churches of Divine worship and religious observance according to the teachings and belief of the Christian faith."

Your COI and application documents indicate that one of your main activities involves conducting outreach programs for drug-addiction prevention, rehabilitation, and counseling. As part of your drug rehabilitation program, you offer room, board, counseling, emotional and religious support, nutritional needs, and assistance with obtaining out-patient employment, mental health, and counseling services elsewhere. According to your application, you will provide drug addicts with treatment and support "to make them change their lives and be people of dignity and respect in the society. As part of the rehabilitation program we enforce in spirituality, social values, social relations and discipline." You state that you have accepted individuals into your drug rehabilitation program who were rejected by other facilities.

You state that you accept as residents any and all individuals with chemical dependency issues. You have numerous contacts with the state of _____ and government agencies in State 2, from which you receive referrals of clients. The average length of time a resident stays at your facility is 5-12 months, depending upon a resident's progress, adjustment, and reintegration into the community. You have rules and regulations, which all residents must read, study, and accept as a requirement to enter your rehabilitation program. These rules pertain to hygiene, housekeeping, visitors, and termination of residency.

In your initial application documents, you stated, "today more than 10,000 people had participated in this rehabilitation program." In regard to this statement, we asked you to explain how, since 2005, you certify the number of people who have gone through your substance abuse program. In reply to our question, you indicated that "approximately 10,000 citizens in public events in admittance and assisting group counseling with members of our clinic and religious communities."

In our letters to you, we asked you the following questions:

- (1) Provide further detailed information about the activities you will engage in as indicated in sections (1) through (17) of the Fourteenth Article of your COI (for example, creating orphanages, organizing missionary work, promoting educational doctrines, etc.)

- (2) Provide a percentage breakdown of the amount of time and resources (financial, staff, and otherwise) you have allocated or will allocate to your substance abuse rehabilitation program.
- (3) Identify the hours that your employees and volunteers work in relation to your substance abuse rehabilitation program.
- (4) Explain in detail what sort of government assistance you were referring to in your letter to us dated September 17, 2009, what government agency is offering you assistance, and any deadlines this agency is imposing upon you.
- (5) Explain how, since 2005, you certify the number of people who have gone through your substance abuse program.
- (6) Explain what you have done and will do with the excess amount of income you have over expenses for the years 2005-2008.

You did not provide a response to any of these questions.

In our letters to you, we asked you to state whether you charge a fee for performing any of the services that you render. In response, you indicated that you do not "collect a fee for performing any of the services provided," adding that the "revenues and contributions [you] receive are from the monthly rent pay of \$[redacted] that [P pays] for every participant that is resident in our premises." You state in your "Rules and Regulations" that all residents must pay a one-time, nonrefundable fee of [redacted] upon intake. You also state that any "economical help from family members must be named by our facility." In one of your letters to us, you state that you have not yet received any donations. Attached to this letter, you submitted information in Spanish that contains the words "donaciones" and "fundador." In addition, in one of your letters to us you indicate, in an Income Statement for the year ending December [redacted], 20[redacted], that you received "Other revenue/Donations" in the amount of \$[redacted]. You also stated in a letter to us, "we are not receiving assistance from the government."

In our letters to you, we asked you several questions about your relationship with Q. You answered some of the questions we posed about this organization, but you did not answer all questions. Specifically, you did not specify what your obligations are to this organization, whether you share any resources (staff, equipment, facilities, etc.), or whether you exercise any control over this organization or vice versa.

We asked you to explain what your relationship is to N, and we asked you to state whether you are filing for exempt status as a church or a religious organization. In response, you stated that you are organized exclusively as a religious organization and that you are the organization that regulates the religious services offered in your facilities and that N accomplishes "the other services we offer in our premises." Attached to or within your application, you submitted a Certificate of Incorporation for M and N, specified that M was a church (e.g., in the Statement of Ordained Clergy and Certificate of Ordination), stated that you have a chapel, and stated that you "are under religious laws." On Schedule E of Form 1023, you answered "No" to the question of whether you are a church, association of churches, or integrated auxiliary of a church, and you did not file a completed Form 1023 Schedule A "Churches."

In our letters, we asked you to provide copies of all your board/trustee meeting minutes from formation to the present, which were to be held in February of each year since you were formed. You replied that these documents were destroyed in a fire that occurred three years after you were formed. You did not provide copies of any minutes, including for your meetings that were held in February of the two years after the year the fire occurred.

Attached to your application was Schedule E, Organizations Not Filing Form 1023 Within 27 Months of Formation. You requested an extension of time to apply to be recognized as exempt from the date you were formed. In our letters to you, we asked you to explain why you did not timely file your Form 1023 application. You stated, at one point, that you "did not file during the 27 month period because the application was filed and sent [on Date 3]. The application sent [then] was returned to us because we used the [older] version of the Form 1023 and the correct form was the [newer] version." In another document, you stated that the reason you did not file your Form 1023 in a timely manner "was because [you] didn't know of a need of a 1023. As soon as [you were] aware of the need of the 1023, [you] took the necessary steps to have it done."

Law

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("regulations") provides that to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more exempt purposes specified in such section. If an organization fails to meet either the organizational test or operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of the exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 4, of Rev. Proc. 2010-9, 2010-2 I.R.B. 258, provides that a favorable determination letter will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed. A determination letter on exempt status is issued based solely upon the facts and representations contained in the administrative record. The applicant is responsible for the accuracy of any factual representations contained in the application. The failure to disclose a material fact or a misrepresentation of a material fact on the application may adversely affect the reliance that would otherwise be obtained through issuance by the IRS of a favorable determination letter.

In Nelson v. Commissioner, 30 T.C. 1151 (1958), the Tax Court held, "Exemptions as well as deductions are matters of legislative grace, and a taxpayer seeking either must show that he comes squarely within the terms of the law conferring the benefit sought."

In Founding Church of Scientology v. United States, 188 Ct. Cl. 490, 412 F.2d 1197 (1969), cert. denied, 397 U.S. 1009 (1970), the Supreme Court examined whether the net earnings of the Scientology church inured to the benefit of private individuals. The court drew inferences from the facts presented to conclude that the organization had failed to prove its entitlement to exempt status under section 501(c)(3) of the Code. The court concluded that the payments the organization made to the private individuals were distributions of the organization's earnings, reasoning, "the logical inference can be drawn that these payments were disguised and unjustified distributions of [the organization's] earnings."

In Christian Echoes Nat'l Ministry v. United States, 470 F.2d 849 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1973), the court held that a religious organization was not exempt from tax under section 501(c)(3) of the Code, because a substantial part of the organization's activities consisted of carrying on propaganda or attempting to influence legislation. In reaching this conclusion, the court stated that "exemption is a privilege, a matter of grace rather than right," adding that "taxpayers have the burden of establishing their entitlement to exemption."

In Universal Life Church v. United States, 372 F. Supp. 770 (E.D. Ca. 1974), the court concluded that "one seeking a tax exemption has the burden of establishing his right to a tax-exempt status."

In Levy Family Tribe Found. v. Commissioner, 69 T.C. 615 (1978), the Tax Court held that an organization failed to qualify for recognition of exemption under section 501(c)(3) of the Code. The court concluded, "The record is replete with unsupported generalizations. These explanations are too general and lack the facts necessary to establish public, rather than personal, purposes of the organization."

In Bubbling Well Church of Universal Love v. Commissioner, 74 T.C. 531 (1980), aff'd, 670 F.2d 104 (9th Cir. 1981), the Tax Court held that an organization failed to establish that no part of its net earnings inure to the benefit of private individuals and, thus, the organization was not exempt from taxation under section 501(c)(3) of the Code. A claim for tax-exempt status, the court held, "calls for open and candid disclosure of all facts bearing upon [an organization's] organization, operations, and finances so that the Court, should it uphold the claimed exemption, can be assured that it is not sanctioning an abuse of the revenue laws. If such disclosure is not made, the logical inference is that the facts, if disclosed would show that [the organization] fails to meet the requirements of section 501(c)(3)."

In Basic Bible Church v. Commissioner, 74 T.C. 846 (1980), aff'd sub nom., Kile v. Commissioner, 739 F.2d 265 (7th Cir. 1984), the Tax Court held that an organization seeking exemption under section 501(c)(3) of the Code has the burden of proving it is entitled to exempt status.

In Peoples Prize v. Commissioner, 87 T.C.M. (CCH) 813 (2004), the Tax Court concluded that an organization failed to establish that it was operated for exempt purposes under section 501(c)(3) of the Code. The court stated that the organization had "for the most part, provided only generalizations in response to repeated requests by [the IRS] for more detail on prospective activities." These "generalizations do not satisfy us," the court concluded, that the applicant qualifies for exemption.

In New Dynamics Found. v. United States, 70 Fed. Cl. 782 (2006), the U.S. Court of Federal Claims held that the IRS properly denied tax exempt status under section 501(c)(3) to a nonprofit corporation that was organized to promote and contribute to charitable causes. In reaching this conclusion, the court stated, "It is well-accepted that, in initial qualification cases . . . gaps in the administrative record are resolved against the applicant," adding that courts "can draw inferences adverse to a taxpayer seeking exempt status where the taxpayer fails to provide evidence concerning its operations, or where the evidence is vague or inconclusive."

Analysis

To be exempt under section 501(c)(3) of the Code, an organization must meet both an organizational and an operational test. Section 1.501(c)(3)-1(a)(1) of the regulations. Our analysis of the information you submitted shows that while you meet the organizational test, you do not meet the operational test. That is, you have not submitted sufficient information in support of your application for exempt status under section 501(c)(3) for us to conclude that you are operated exclusively for charitable, religious, or educational purposes as specified in section 501(c)(3).

For an organization claiming the benefits of section 501(c)(3) of the Code, "exemption is a privilege, a matter of grace rather than right." Christian Echoes Nat'l Ministry, 470 F.2d at 857. It is well-established that the law imposes on the applicant the burden of proving that it is entitled to exemption. See, Basic Bible Church, 74 T.C. at 855, and Universal Life Church, 372 F. Supp. at 775. The applicant has the burden of showing it "comes squarely within the terms of the law conferring the benefit sought." Nelson, 30 T.C. at 1154. A favorable determination letter will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from federal income tax is claimed. Section 4, of Rev. Proc. 2010-9. In all, your application and supporting documents do not satisfy your burden of showing that you fall "squarely within the terms" of section 501(c)(3), because you have provided insufficient, incomplete, or inconsistent information in support of your application for exempt status.

In our letters to you, we asked you specific questions to help determine whether you qualify for exemption from federal income tax under section 501(c)(3) of the Code. While you did provide some general information and did answer some of our questions, you failed to provide a response to some of the key questions that we asked pertaining to your activities. Specifically, we asked you to provide more detailed information about other activities your COI indicates you will engage in (e.g., creating orphanages, organizing missionary work, promoting educational doctrines, etc.), to provide a percentage breakdown of the amount of time and resources you spend on your substance abuse rehabilitation program, to identify the hours that your employees and volunteers work in relation to this program, to explain how you certify the number of people who have participated in your drug rehabilitation program, and to account for the excess amount of your income over your expenses. You did not provide a response to these aforementioned questions. Courts have been persuaded to rule unfavorably on a tax exemption issue when the nature of the proposed activities is especially ambiguous. Levy Family Tribe Found., 69 T.C. at 619.

We also asked you specific questions about your relationship with N and Q. As far as your relationship with Q, you provided general responses to our questions but you did not specifically answer all of our questions. That is, you did not provide a response to the questions of what

your obligations are to Q, whether you and Q share any resources, or whether you exercise any control over Q or vice versa. As for your relationship with N, it appears that N was established to operate your drug rehabilitation program and that you were established to operate as a religious organization or church, yet most of the supporting documents you submitted with your application indicate that you were established to operate a drug rehabilitation program. Also, your COI specifically states that you will engage in activities that promote your goal of striving "towards the founding of one or more Christian ministry and Christian churches of Divine worship and religious observance according to the teachings and belief of the Christian faith." Despite our repeated requests, you did not clarify your relationship with Q or N.

Likewise, it is not entirely clear whether you operate through one or two different corporations (i.e., M, N, or both), or whether you are filing as a church or a religious organization. Attached to or within your application, you submitted a Certificate of Incorporation for M and N, specified that M was a church (e.g., in the Statement of Ordained Clergy and Certificate of Ordination), stated that you have a chapel, and also stated that you "are under religious laws." Yet, on Schedule E of Form 1023, you answered "No" to the question of whether you are a church, association of churches, or integrated auxiliary of a church, and you did not file a completed Form 1023 Schedule A "Churches." Thus, some of the information you have submitted indicates you are either a religious organization or church, while other information indicates that you are neither.

In addition, some of the documents you submitted with your application were in Spanish, which we are unable to process. And, much of the documentation you submitted in response to our requests for additional information was not submitted under penalties of perjury. Also, you did not provide copies of minutes from your board of director meetings for any of the years that you have been organized. You did indicate that a fire destroyed many of your important documents and, thus, you are unable to provide a copy of minutes for years prior to that time. However, you still did not provide copies of minutes for your board meetings that took place after the fire occurred.

The Tax Court has stated that an application for tax-exempt status "calls for open and candid disclosure of all facts bearing upon [an applicant's] organization, operations, and finances [to assure that there is no] abuse of the revenue laws. If such disclosure is not made, the logical inference is that the facts, if disclosed, would show that the [applicant] fails to meet the requirements of section 501(c)(3)." Bubbling Well Church, 74 T.C. at 535. See also, Founding Church of Scientology, 412 F.2d at 1201. Furthermore, the courts have repeatedly upheld the Service's determination that an organization has failed to establish exemption where the organization fails to provide requested information. When an application "has, for the most part, provided only generalizations in response to repeated requests by [the Service] for more detail on prospective activities, those 'generalizations do not satisfy us that [the applicant] qualifies for the exemption.'" Peoples Prize, 87 T.C.M. at 814.

In addition to not providing all requested information, you also provided inconsistent information in response to our request for additional information. For example, regarding our questions relating to your sources of funding, you stated in one part of your application that your only source of funding was from the \$_____ you receive per month, per resident from a government agency. However, you state in another part of your application that residents also pay a \$_____ one-time, nonrefundable fee upon admission to your facility, that residents are required to state any "economic help from family members," and that you received \$_____ in

"Other Revenue/Donations" for the year 20 . In another part of your application, you submitted documents (in Spanish) that appear to indicate that you may have solicited donations and contributions and, thus, you may also have income from that source as well. These facts are inconsistent, indicating that you may have more sources of income and revenues than the \$ you receive each month for each resident in your facility.

Moreover, you submitted inconsistent explanations for why you did not timely file your Form 1023 within 27 months from formation. In one part of your application, you stated that you timely filed the application but that it was returned to you because you used the wrong application form. Yet in another part of your application you state that you were unaware that you needed to file an application and when you became aware you did file one.

Finally, there are a variety of key gaps within your application. For example, you provided very little information on the government agency that you indicated you receive funding from. We specifically asked you to explain in detail what sort of assistance you were referring to, what government agency is offering you assistance, and any deadlines this agency is imposing upon you. You not only did not provide this information, but you also stated at another point in your application that you were not receiving any financial assistance from the government. In addition, you failed to explain how you have cared for 10,000 addicts with only the assistance of volunteers. That is, in your initial application documents, you stated, "today more than 10,000 people had participated in this rehabilitation program." When we asked for further information about this statement, you replied, "approximately 10,000 citizens in public events in admittance and assisting group counseling with members of our clinic and religious communities." Thus, it is unclear whether 10,000 people have been through your drug rehabilitation program, have attended public events that you have held, or have been in your group counseling sessions.

As the U.S. Court of Federal Claims stated in New Dynamics Found., 70 Fed. Cl. 782, "It is well-accepted that, in initial qualification cases . . . gaps in the administrative record are resolved against the applicant," adding that courts "can draw inferences adverse to a taxpayer seeking exempt status where the taxpayer fails to provide evidence concerning its operations, or where the evidence is vague or inconclusive." *Id.* at 802. Thus, the gaps in the administrative record in this case, combined with your failure to provide conclusive and clear documentation concerning your operations, leads us to infer that you are not operating for an exempt purpose under section 501(c)(3).

In conclusion, based on the information you submitted to us, we are unable to make a reasonable determination of the issues raised in your application. The information you submitted is, on different occasions, insufficient, incomplete, inconsistent, or contradictory and, thus, taken as a whole, inadequate. In all, you have not provided an open and candid disclosure of all the facts bearing upon your organization and operations. Accordingly, it is our determination that you fail to qualify for exemption under section 501(c)(3) of the Code because you failed to prove that your operations will be exclusively in furtherance of exempt purposes. Thus, you do not satisfy the operational test under section 501(c)(3).

Conclusion

For these reasons, we conclude that you do not qualify for recognition of exemption from federal

income tax under section 501(c)(3) of the Code, and you must file federal income tax returns.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination.

Your protest statement should be accompanied by the following declaration, over the signature of one of your principal officers or directors:

Under penalties of perjury, I declare that I have examined this protest statement, including accompanying documents, and, to the best of my knowledge and belief, the statement contains all the relevant facts, and such facts are true, correct, and complete.

You also have a right to request a conference to discuss your protest. This request should be made when you file your protest statement. An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you. If you want representation during the conference procedures, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. For more information about representation, see Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the IRS will consider the failure to protest as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Send your protest statement, Form 2848, and any supporting documents to this address:

Internal Revenue Service
TE/GE

1111 Constitution Ave, N.W.
Washington, DC 20224

You may also fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

A handwritten signature in black ink, appearing to be 'R. Choi'.

Robert Choi
Director, Exempt Organizations
Rulings & Agreements